

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division**

**LEXON INSURANCE COMPANY,
a Texas corporation,**

Plaintiff,

v.

Civil Action No. 3:18cv671

**URBAN GRID SOLAR, LLC,
a Virginia limited liability company,**

**SERVE: David M. Lay, Registered Agent
Leclair Ryan, PC
919 East Main Street, 24th Floor
Richmond, VA 23219**

**URBAN GRID MECHANICAL, LLC,
formerly a Virginia limited liability company,**

**SERVE: Gregory W. Haley, Registered Agent
13403 Greenwood Road
Glen Allen, VA 23059**

GREGORY W. HALEY,

**SERVE: 13403 Greenwood Road
Glen Allen, VA 23059**

and

CAROLYN C. HALEY,

**SERVE: 13403 Greenwood Road
Glen Allen, VA 23059**

Defendants.

COMPLAINT

The plaintiff, Lexon Insurance Company (“Lexon”), by counsel, in accordance with Rule 7 of the *Federal Rules of Civil Procedure*, states the following as its Complaint against the

defendants, Urban Grid Solar, LLC; Urban Grid Mechanical, LLC; Gregory W. Haley; and Carolyn C. Haley.

THE PARTIES

1. Lexon is a corporation duly organized and existing under the laws of the State of Texas which maintains its principal place of business in the Commonwealth of Kentucky. Lexon is duly authorized to engage in the surety business in the Commonwealth of Virginia.

2. Upon information and belief, defendant Urban Grid Solar, LLC (“Urban Grid Solar”) is a limited liability company organized and existing under the laws of the Commonwealth of Virginia where it also maintains its principal place of business. Urban Grid Solar, LLC was formerly known as “Urban Grid Solar, Inc.” but converted to an LLC pursuant to papers filed with the Virginia State Corporation Commission on or about January 5, 2012.

3. Upon information and belief, Urban Grid Mechanical, LLC (“Urban Grid Mechanical”) is a former limited liability company organized and existing under the laws of the Commonwealth of Virginia where it also maintained its principal place of business. Urban Grid Mechanical voluntarily terminated pursuant to papers filed with the Virginia State Corporation Commission on or about August 5, 2015.

4. The individual defendant Gregory W. Haley is and was at all times pertinent to this proceeding, an individual citizen of the Commonwealth of Virginia.

5. The individual defendant Carolyn C. Haley is and was at all times pertinent to this proceeding, an individual citizen of the Commonwealth of Virginia.

JURISDICTION AND VENUE

6. This court has jurisdiction under 28 U.S.C. § 1332 in that Lexon is a citizen of the State of Texas and Commonwealth of Kentucky, and the parties defendant are citizens of the

Commonwealth of Virginia. The amount in controversy exceeds \$75,000, exclusive of attorneys' fees, costs and interest.

7. Venue in this Court is proper as it is specifically conferred by 28 U.S.C. § 1391(b)(1) as all of the defendants reside in this district, and by 28 U.S.C. § 1391(b)(2) as a substantial part of the events or omissions giving rise to the claims raised by this Complaint occurred within this district.

STATEMENT OF FACTS

8. On or about November 10, 2011, Urban Grid Solar and Urban Grid Mechanical, as corporate indemnitors, and Gregory W. Haley and Carolyn C. Haley, in their individual capacities as personal indemnitors (Urban Grid Solar, Urban Grid Mechanical, Gregory W. Haley, and Carolyn C. Haley are sometimes collectively referred to as the "Indemnitors") entered into a written General Agreement of Indemnity under the terms and conditions of which each of the Indemnitors, jointly and severally, promised and bound themselves to indemnify and save Lexon harmless from and against every claim, demand, liability, cost, charge, suit, judgment and expense which Lexon may pay or incur in consequence of having executed, or procured the execution of, any bonds issued by Lexon and required by, for or on behalf of any of the Indemnitors, including fees of attorneys, and the expense of procuring, or attempting to procure, release from liability, or in bringing suit to enforce the obligation of any of the Indemnitors under the General Agreement of Indemnity. A true and accurate copy of the November 10, 2011 General Agreement of Indemnity (the "GAI") is attached as Exhibit A and is incorporated by reference as if specifically set forth in this Complaint.

9. Under the GAI, "[i]n the event of payment by [Lexon], the Indemnitors agree to accept the voucher or other evidence of such payment as prima facie evidence of the propriety

thereof, and of the Indemnitor's liability therefore to [Lexon]." Ex. A, p. 1.

10. On November 10, 2011, Lexon, as surety, issued its Labor and Material Payment Bond (Bond No. 1069711) ("Payment Bond") naming Urban Grid Solar, Inc. as its principal and co-obligor, and Gilbane Building Company ("Gilbane") as its obligee, in connection with the Installation – PEA Madison PV – Order Number 61768-002 Project which Gilbane awarded to Urban Grid Solar, Inc. under its general contract dated June 22, 2010, as amended on October 25, 2011. The Payment Bond was issued to secure the payment of all labor and material used or reasonably required for use in the performance of Urban Grid Solar, Inc.'s contract. A copy of the Payment Bond is attached as Exhibit B, and is incorporated by reference as if specifically set forth in this Complaint.

11. The Payment Bond was issued in reliance upon the terms and conditions of the GAI, and the promises of the Indemnitors to indemnify and save Lexon harmless for any and all losses.

12. In conjunction with the performance of its contractual obligations to Gilbane, Urban Grid Solar, Inc. entered into two separate subcontracts with Commercial One Electrical Contractors, Inc. ("Commercial One") dated November 7, 2011, for (1) the Virginia Distribution Center Project (Project Code 194-17865-002); and (2) the 14th Street Parking Deck Project (Project Code 194-17865-003) collectively "the Projects"). Urban Grid Solar, Inc. requested that Commercial One furnish labor and materials to perform electrical work for use on the Projects.

13. On or about January 5, 2012, Urban Grid Solar, Inc. converted to Urban Grid Solar, LLC.

14. Notwithstanding its contractual obligations to its subcontractors, Urban Grid Solar refused or failed to pay Commercial One in full for the labor and/or materials furnished in

connection with the work on the Projects.

15. As Urban Grid Solar's surety on the Projects, Lexon was presented with at least one claim, and was called upon to make payment under the terms and conditions of the Payment Bond. Lexon incurred costs defending itself against two related cases: (1) *Commercial One Elec. Contractors, Inc. v. Trane U.S., Inc., et al.*, Civil Action No. 3:12cv888, in the United States District Court for the Eastern District of Virginia, Richmond Division, (the "Commercial One Federal Litigation"); and (2) *Commercial One Elec. Contractors, Inc. v. Urban Grid Solar, Inc., et al.*, Case No. CL13-1656, in the Circuit Court for the City of Richmond, Virginia (the "Commercial One State Litigation"). Commercial One initiated the Commercial One Federal Litigation and the Commercial One State Litigation seeking to recover against the Payment Bond for work it performed at the direction of Urban Grid Solar and for which it claimed it was not paid. As a result of the claim, Lexon has incurred and continues to incur losses, including attorneys' fees, costs and expenses.

16. The Commercial One Federal Litigation was dismissed at the pleading stage. However, the Commercial One State Litigation proceeded through discovery, motions, other pretrial filings, and an unsuccessful mediation. In a judicial settlement conference two days before the scheduled trial date, Lexon, Commercial One, and Urban Grid Solar reached an agreement whereby Commercial One would accept payment from Lexon in the amount of \$201,000 in full resolution of its claim. A true copy of the May 26, 2015 Settlement and Release Agreement executed by Commercial One is attached as Exhibit C.

17. Pursuant to the Settlement and Release Agreement, "Commercial One hereby irrevocably assigns to Lexon any and all of its rights, title and interest in and to any and all claims, demands, actions and causes of action it may have against [Urban Grid Solar] which

arise from or are otherwise related to the Projects, including but not limited to, the claims asserted in the Litigation, and appoints Lexon as its true and lawful attorney-in-fact to enforce such claims in Lexon's own name or the name of Commercial One." Ex. C, p. 3.

18. On May 28, 2015, Lexon paid \$201,000 to Commercial One's counsel as required by the Settlement and Release Agreement. A true copy of the Wire Detail Report is attached as Exhibit D.

19. In addition to the principal loss under the Payment Bond, Lexon has incurred significant losses in the form of attorneys' fees, costs and expenses, which, as of February 29, 2016, totaled \$165,548.85, a figure which continues to increase.

20. Under the terms and conditions of the GAI, the Indemnitors, jointly and severally, are obligated to indemnify and save Lexon harmless from the claim asserted by Commercial One and for its attorneys' fees, costs and expenses incurred in responding to the claim and in pursuing its indemnity rights.

21. The Indemnitors have ignored and/or failed to adequately respond to Lexon's demands for indemnification.

COUNT I SPECIFIC PERFORMANCE

22. Lexon restates and incorporates the allegations as set forth in ¶¶ 1 through 21 above as if specifically set forth in this paragraph.

23. Lexon, in reliance upon the execution of the GAI by Urban Grid Solar, Urban Grid Mechanical, Gregory W. Haley, and Carolyn C. Haley, issued the Payment Bond for the Projects naming Urban Grid Solar as its principal, has been presented with at least one claim under the Payment Bond, and has and will continue to incur losses and attorneys' fees, costs and expenses, by virtue of the issuance of the Payment Bond.

24. Urban Grid Solar, Urban Grid Mechanical, Gregory W. Haley, and Carolyn C. Haley agreed to indemnify and save Lexon harmless, upon demand, by among other things, collateralizing their indemnity obligations, and discharging any liabilities under the Payment Bond.

25. Notwithstanding Lexon's demands, Urban Grid Solar, Urban Grid Mechanical, Gregory W. Haley, and Carolyn C. Haley have failed to discharge all of the liabilities under the Payment Bond, collateralize their indemnity obligations, and/or otherwise perform their obligations under the GAI.

26. Urban Grid Solar, Urban Grid Mechanical, Gregory W. Haley, and Carolyn C. Haley's actions and failures to act constitute a default under the GAI and a breach of contract, which breaches are material in nature and are subjecting Lexon to significant exposure and other losses.

27. As a result of their failure to perform, for which there is no adequate remedy at law, Lexon is entitled to the entry of an order compelling the Indemnitors to immediately and specifically perform their obligations under the express terms and conditions of the GAI by (a) depositing sufficient funds to discharge any claim made against Lexon, and to satisfy all outstanding attorneys' fees, costs and expenses, and (b) completely discharging the liabilities for which Lexon has made payment under the Payment Bond.

WHEREFORE, Lexon requests the entry of an order compelling Urban Grid Solar, LLC, Urban Grid Mechanical, LLC, Gregory W. Haley, and Carolyn C. Haley, jointly and severally, and as their interests appear, to immediately and specifically perform their obligations under the GAI.

COUNT II
BREACH OF CONTRACT

28. Lexon restates and incorporates the allegations set forth in ¶¶ 1 through 27 above as if specifically set forth in this paragraph.

29. Under the terms and conditions of the November 10, 2011 GAI, Urban Grid Solar, Urban Grid Mechanical, Gregory W. Haley, and Carolyn C. Haley, jointly and severally, are obligated to indemnify and save Lexon harmless from and against every claim, demand, liability, cost, charge, suit, judgment and expense which Lexon may pay or incur in consequence of having executed the Payment Bond, including fees of attorneys, and the expense of procuring, or attempting to procure, release from liability, or in bringing suit to enforce the obligation of any of the Indemnitors under the GAI.

30. As a result of the receipt of Commercial One's claim and Lexon's issuance of the Payment Bond on behalf of Urban Grid Solar in connection with the Projects, Lexon (a) has sustained unreimbursed losses in claims paid in the amount of \$201,000.00, and (b) has incurred attorneys' fees, costs and expenses, which as of February 29, 2016, totaled \$165,548.85, a number that continues to increase.

31. The failure and/or refusal of Urban Grid Solar, Urban Grid Mechanical, Gregory W. Haley, and Carolyn C. Haley to indemnify and save Lexon harmless under the terms and conditions of the GAI constitutes a material breach of contract, the direct and natural result of which has caused Lexon to sustain significant damages.

WHEREFORE, Lexon seeks judgment against Urban Grid Solar, LLC, Urban Grid Mechanical, LLC, Gregory W. Haley, and Carolyn C. Haley, jointly and severally, in the principal amount of \$366,548.85 or those sums which the evidence may otherwise establish, plus all interest at the pre-judgment rate, attorneys' fees, costs, and expenses, as well as post-

judgment interest on the entire sum until paid, all as provided by the terms and conditions of the
GAI.

Respectfully submitted,

LEXON INSURANCE COMPANY

By Counsel

/s/ Thomas J. Moran

Richard T. Pledger (VSB No. 28102)

Thomas J. Moran (VSB No. 71296)

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